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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Neil Rusty Bond,

10 Plaintiff,

11 v.

12 Alex M Azar,

13 Defendant.
14

No. CV-19-04933-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff's application to proceed in forma pauperis.
16 (Doc. 2). To qualify for in forma pauperis status,

17 An affidavit in support of an IFP application is sufficient where it alleges that
18 the affiant cannot pay the court costs and still afford the necessities of life.
19 *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 [] (1948). The
20 IFP statute does not itself define what constitutes insufficient assets. As this
court has recognized, "[o]ne need not be absolutely destitute to obtain
benefits of the in forma pauperis statute." *Jefferson v. United States*, 277 F.2d
723, 725 (9th Cir.1960).

21 *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015).

22 In this case, Plaintiff states that he receives "rent payments, interest, or dividends."
23 (Doc. 2 at 1). However, he does not state the amount of such payments or whether he
24 expects them to continue in the future. Thus, on this record, the Court cannot assess
25 whether Plaintiff qualifies for in forma pauperis status.

26 Further, if in forma pauperis status were to be granted, the Court would be required
27 to screen the complaint pursuant to 28 U.S.C. § 1915(e)(2). In this case, the Court has
28 reviewed the complaint and it appears to be an attempt to appeal a decision by the social

1 security administration. Plaintiff has named as the Defendant in this case, Alex M. Azar,
2 the Secretary of the United States Department of Health and Human Services. However,

3 Pursuant to P.L. No. 103-296, the Social Security Independence and Program
4 Improvements Act of 1994, the function of the Secretary of Health and
5 Human Services in Social Security cases was transferred to the
6 Commissioner of the Social Security Administration, effective March 31,
7 1995. In accordance with section 106(d) of the Act, Shirley S. Chater,
8 the Commissioner of Social Security, is substituted for Donna E. Shalala,
9 Secretary of Health and Human Services, as the defendant.

10 *Lester v. Chater*, 81 F.3d 821, 835 (9th Cir. 1995), *as amended* (Apr. 9, 1996).


11 Here, Plaintiff's appeal was filed well after 1995 and after the transition rules of
12 section 106(d). Therefore, it would appear he has named the wrong Defendant.

13 Based on the foregoing,

14 **IT IS ORDERED** that Plaintiff's application to proceed in forma pauperis (Doc. 2)
15 is denied.

16 **IT IS FURTHER ORDERED** that by August 29, 2019, Plaintiff shall either pay
17 the filing fee or file a complete application to proceed in forma pauperis. If Plaintiff fails
18 to take either of these actions by August 29, 2019, the Clerk of the Court shall enter
19 judgment dismissing this case without prejudice. If in forma pauperis status is later
20 granted, this Court will screen the complaint as discussed above.

21 Dated this 14th day of August, 2019.

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23 James A. Teilborg
24 Senior United States District Judge
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